

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BRIAN A. JAMISON,

Petitioner,

-vs-

ROBIN KNAB, Warden, Chillicothe
Correctional Institution,

Respondent.

:

Case No. 3:09-cv-297

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DECISION AND ORDER

This case is before the Court on correspondence from Petitioner which has been docketed so as to avoid its being an ex parte communication (Doc. No. 18). Petitioner advises that he has not yet received a copy of the Magistrate Judge's Report and Recommendations of January 31, 2011, although he had heard about it from his family. When the Report was filed, Petitioner had not yet advised the Court of his transfer from Chillicothe Correctional Institution to the Dayton Correctional Institution – the first such written notice is on this letter. Now that the address has been changed, the Clerk will send a new copy of the Report to Petitioner at DCI and his time to file objections will run for seventeen days from today or until February 28, 2011.

This case is also before the Court on Petitioner's Motion Opposing Transfer of this case from Magistrate Judge Ovington to Magistrate Judge Merz (Doc. No. 19). He points out that the case has been pending before Magistrate Judge Ovington for more than thirteen months.

Petitioner asserts that this whole regurgitated process is extremely

bias [sic] and prejudice due to the fact that Magistrate Judge Merz could not be fully apprised of the circumstances argued by petitioner or respondent.

(Motion, Doc. No. 19, PageID 1082.)

There has been no evidentiary hearing in this case before Judge Ovington, so there has been no occasion for her to hear live witnesses and weigh their credibility. Everything done in the case has been done in writing and placed in the file. The Report and Recommendations are not a conclusory entry, but a thirty-two page analysis of the case. When Petitioner has had a chance to review the Report, if he believes there are parts of the file which Magistrate Judge Merz has ignored or overlooked, he will be free to call those to the Court's attention in his objections.

The Court notes that Petitioner does not make any claim that Magistrate Judge Merz is disqualified from considering his case by some personal bias or prejudice against him. The transfer of the case was made under the Court's General Order of Assignment and Reference which permits the Magistrate Judges at Dayton to transfer cases among themselves, which is usually done, as it was here, to balance the workload. Of course, litigants do not get to pick their judges. Petitioner's Motion Opposing Transfer is therefore denied.

February 9, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge